AGENDA ITEM 12

GENERAL EXCHANGE OF INFORMATION ON NON-LEGALLY BINDING UNITED NATIONS INSTRUMENTS ON OUTER SPACE

STATEMENT BY BRIAN ISRAEL, U.S. REPRESENTATIVE TO THE LEGAL SUBCOMMITTEE OF THE UN COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

APRIL 2014

Thank you, Mr. Chairman. We wish to again thank Japan for proposing this agenda item at the last session of the Legal Subcommittee, which we were pleased to co-sponsor. States wishing to cooperate in the peaceful exploration and use of outer space have a range of mechanisms at their disposal to structure their cooperation, and identifying the optimal mechanism for a given instance of international cooperation is important to the overall success of the endeavor. It is with this in mind that the United States and co-sponsors proposed the Review of International Mechanisms for Cooperation in the Peaceful Exploration and Use of Outer Space at the 51st Session, and we are very pleased with the way this work is proceeding thanks to the active engagement of member States and the able leadership of Professor Setsuko Aoki.

In particular, the legally non-binding principles and technical guidelines developed by COPUOS have proven to be important mechanisms

for international cooperation to address major opportunities and challenges in the peaceful use and exploration of outer space. This opportunity to exchange information is especially welcome in view of the recommendation of the Group of Governmental Experts that "Member States take measures to implement, to the greatest extent practicable, principles and guidelines endorsed on the basis of consensus by the Committee on the Peaceful Uses of Outer Space and the General Assembly."[1]

Among the most important roles for international lawyers in facilitating successful international cooperation is identifying the optimal cooperative mechanism in any given case—including when a legally non-binding mechanism may actually facilitate the cooperative objectives better than a treaty. The *Principles Relating to Remote Sensing of the Earth from Outer Space* serve as an excellent example of this Subcommittee advancing groundbreaking uses of outer space for the benefit of all countries through such a legally non-binding mechanism.

With the advent of remote sensing came a need to reconcile the great promise of this new capability with the concerns shared by many States about having access to data about their territory. Harnessing the full

[1] Report of the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities, UN Doc. A/68/189 (July 29, 2013) at ¶ 73.

potential of remote sensing thus required a global consensus on how it was to be conducted.

As delegates are aware, this Subcommittee ultimately elected to develop a set of principles on remote sensing, which were adopted unanimously by the General Assembly. This mechanism offered the benefit of a *global* consensus on how this new activity would be conducted, rather than the piecemeal acceptance over time that generally attends international agreements.

The legally non-binding character of the Remote Sensing Principles certainly has not deprived them of influence – to the contrary, they are widely credited with fostering a successful international regime and enabling the robust remote sensing capabilities we enjoy today, whose myriad applications, such as in disaster mitigation and response, benefit all States.

At the heart of the Remote Sensing Principles is the principle of non-discriminatory access set forth in Principle XII. This principle of non-discriminatory access has been integrated into U.S. law, mandating that licenses to operate private remote sensing systems obligate the operator to "make available to the government of any country…unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms

and conditions."[2] It is worth noting that the United States did not incorporate this principle into law because it was legally required to do so—the Principles, after all, are not legally binding—but rather in furtherance of its investment in the success of the international regime for remote sensing the Principles embody.

Mr. Chairman, I will conclude with the reflection that the nature of the task faced by this Subcommittee as it took up the subject of remote sensing in the mid-1970s differed fundamentally from the task it faced in the mid-1960s. In contrast to the task of developing an international legal framework for outer space where none existed, this Subcommittee undertook its work on remote sensing with a functioning international legal framework already in place.

The same could be said of the efforts of space agencies, about a decade later, beginning at UNISPACE III, to cooperate to realize the potential of remote sensing systems for disaster management. These agencies were able to build upon not only the international legal framework that enables the use of outer space, but also the international regime enabled by the Remote Sensing Principles, and were thus able to structure their highly successful cooperation on disaster management around an even less

[2] 51 U.S.C. § 60122(b)(2).

formal cooperative mechanism — the International Charter on Space and Major Disasters.

We think this example illustrates the crucial importance of legally non-binding mechanisms to this Subcommittee's work in furthering international cooperation in the peaceful exploration and utilization of outer space, and we are grateful for this exchange of information. Thank you.